

Joint Standing Committee on Judiciary

LD 202

An Act to Improve Maine's Jail Diversion Programs

PUBLIC 520

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CANAVAN	OTP-AM MAJ	H-829
DAGGETT	ONTP MIN	

LD 202 proposed to authorize the Judicial Department to establish mental health treatment programs in the Superior Courts and District Courts.

Committee Amendment "A" (H-829), the majority report of the Joint Standing Committee on Judiciary, proposed to replace the bill to provide enabling legislation for the Judicial Department to apply for and receive funding from sources other than the State to establish mental health treatment courts. The amendment proposed that if the Judicial Department receives funding, before implementation of mental health treatment courts the Judicial Department must report to the joint standing committee of the Legislature having jurisdiction over judiciary matters information about the funding and the plans for the mental health treatment court.

Enacted law summary

Public Law 2001, chapter 520 provides enabling legislation for the Judicial Department to apply for and receive funding from sources other than the State to establish mental health treatment courts. If the Judicial Department receives funding, before implementation of mental health treatment courts the Judicial Department must report to the joint standing committee of the Legislature having jurisdiction over judiciary matters information about the funding and the plans for the mental health treatment court.

LD 361

An Act to Adopt the Model Business Corporation Act in Maine

PUBLIC 640

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
RICHARDSON	OTP-AM	H-1037
EDMONDS		

LD 361 was a concept draft that proposed to amend the State's business corporation act following a study by the Corporate Law Revision Committee of the Business Law Section of the Maine State Bar Association. That committee proposed to use the most recent version of the Model Business Corporation Act, promulgated by the Committee on Corporate Laws of the Business Law Section of the American Bar Association, and to conform it to existing Maine practices and procedures where applicable.

Committee Amendment "A" (H-1037) proposed to replace the bill.

It proposed to repeal the Maine Revised Statutes, Title 13-A and replace it with a new Title 13-C, entitled the "Maine Business Corporation Act." The language of Title 13-C was developed by the Corporate Law Revision Committee of the Business Law Section of the Maine State Bar Association, in association with the Office of the Secretary of State.

Among the significant provisions of the proposed legislation are the following. The proposed Maine Business Corporation Act proposed to:

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1. Simplify the requirements for filing documents with the Secretary of State; establish rules for electronic filing; and simplify the Secretary of State's process for reviewing proposed corporate names;
2. Spell out limits on a corporation's ability to limit or eliminate the personal liability of a director;
3. Increase flexibility for corporations to manage financial matters by eliminating requirements relating to "legal capital," "common" or "preferred" shares, "par value" and "treasury shares";
4. Establish an "opt-in" provision for preemptive rights;
5. Provide greater flexibility for privately held corporations to use shareholder agreements;
6. Remove the current requirement for a minimum number of directors;
7. Provide greater specificity and clarity regarding the standards of conduct required of directors and officers, focusing on the manner in which duties are performed;
8. Provide greater specificity and clarity regarding indemnification of directors and officers;
9. Enact specific provisions regarding domestication and conversion of business entities;
10. Grant general authority to corporations to amend their articles of incorporation, rather than listing specific permissible amendments; require all amendments to be approved by the board of directors before being submitted to the shareholders; and authorize the board of directors to make nonsubstantive amendments without a shareholder vote; and
11. Set standards regarding the quantity of shareholder approval required for certain transactions and the ability of the corporation to elect a different standard.

Among the differences between the Model Business Corporation Act and this Act are the following. The proposed Maine Business Corporation Act proposed to:

1. Continue the office of clerk and allow corporate records to be kept at the office of the clerk;
2. Preserve the streamlined process for forming "directorless" corporations, managed directly by shareholders;
3. Carry forward the concept of "close corporations" and several provisions specific to such corporations;
4. Continue to allow directors to consider the interests of certain "other constituencies," including employees and the community, in carrying out their duties and preserve the presumption that a 2/3 vote is necessary to remove a director in mid-term;
5. Continue the Maine law stating that a director vote is not required for certain corporate actions if the shareholders by unanimous consent approve the matter;

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6. Preserve the application of existing Maine law, Title 13-A, sections 611-A and 910 to the acquisition of a significant interest in publicly held Maine corporations; and
7. Continue Maine practices and rules regarding the filing and content of annual reports.

The amendment also proposed to repeal the current Professional Service Corporation Act and replace it with a revised Professional Services Corporation Act, based on language developed by the American Bar Association as a supplement to the Model Business Corporation Act. The revised Act proposed to clarify which professions are subject to the Act and which professions may elect to be subject to the Act. It also proposed to allow the formation of corporations by members of more than one profession, if the licensing authorities of those professions allow such practices. The Act proposed to retain the same provisions regarding shareholder liability as in current law and allow a minority of director positions to be held by nonprofessionals. The Act also proposed rules for foreign professional corporations that perform professional services in the State and proposed to allow mergers with domestic or foreign professional service corporations and business entities under certain circumstances.

Enacted law summary

Public Law 2001, chapter 640 repeals Title 13-A, the current Maine Business Corporation Act enacted in 1971, and replaces it with a new Title 13-C, also entitled the "Maine Business Corporation Act." It also repeals the current Professional Service Corporation Act and replaces it with a revised Professional Service Corporation Act.

The new business corporation act, Title 13-C, was developed by a revision committee of the Maine State Bar Association in association with the Office of the Secretary of State. The new act consists primarily of the 1984 Model Business Corporation Act developed by the American Bar Association, updated and modified by the revision committee as necessary to preserve important unique aspects of Maine law. Changes to corporate law are too numerous to summarize; please refer to OPLA Bill Summaries or a copy of the public law itself for additional information.

The revised Professional Service Corporation Act was also developed by the revision committee and is based on language developed by the American Bar Association as a supplement to the Model Business Corporation Act. The revised Act clarifies which professions are subject to the Act, allows multi-profession corporations if the licensing authorities of those professions allow such practices and allows a minority of director positions to be held by nonprofessionals. The Act also provides rules for foreign professional corporations and allows mergers with domestic or foreign professional service corporations and business entities under certain circumstances.

LD 1573

An Act to Enact the Uniform Principal and Income Act of 1997

PUBLIC 544

Sponsor(s)
NORBERT
RAND

Committee Report
OTP-AM

Amendments Adopted
H-851

LD 1573 proposed to enact the Uniform Principal and Income Act of 1997, adopted by the National Conference of Commissioners on Uniform State Laws in 1997. It proposed to provide rules for handling trust principal, income, receipts and disbursements.

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Committee Amendment "A" (H-851), in addition to other changes, proposed to set out specific rules for allocating income from harvesting timber.

This amendment proposed to include Maine Comments to explain deviations from NUPIA.

Enacted law summary

Public Law 2001, chapter 544 enacts the Uniform Principal and Income Act of 1997, adopted by the National Conference of Commissioners on Uniform State Laws in 1997. It provides rules for handling trust principal, income, receipts and disbursements. The Act takes effect January 1, 2003, and it applies to trusts and decedent's estates starting with the first fiscal year of the trust or decedent's estate that begins on or after January 1, 2003, unless the terms of the trust or will expressly provide otherwise.

LD 1624

An Act Concerning the Payment of Child Support

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HAWES	ONTP MAJ	
O'GARA	OTP-AM MIN	

LD 1624 proposed to provide an additional child support collection tool for the Department of Human Services. It proposed to require that employers who hire persons on a contract basis for \$2,500 or more report the names, addresses and social security numbers to the Department of Human Services.

In addition, the bill proposed to require that increases in collections of debt owed the department and not owed to anyone else over \$7,406,560 must be used to increase TANF and Parents as Scholars Program cash assistance levels until Maine's maximum level for a family of 3 reaches the New England average.

Committee Amendment "A" (H-830), the minority report of the Joint Standing Committee on Judiciary, proposed to replace the bill. It proposed to require the reporting of the hiring of independent contractors to the Department of Human Services in order to locate people who should be paying child support and to verify their ability to pay. Those required to report would be the State and any employer who contracts with the State to provide services worth more than \$1,000. (Not adopted)

LD 1670

An Act Regarding Child Abandonment

PUBLIC 543

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
KILKELLY	OTP-AM	S-447
O'BRIEN L		

LD 1670 proposed to create an affirmative defense to the crime of abandonment of a child if the child was 31 days or younger and the person charged delivered the child to a hospital emergency room or to a police officer, firefighter, medical services provider or hospital staff member. This bill also proposed to ensure anonymity for the person delivering the child and to terminate the parental rights and responsibilities of the parent delivering the child.

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Committee Amendment "A" (S-447) proposed to replace the bill to provide procedures for the safe abandonment of an infant without criminal liability for abandonment.

Enacted law summary

Public Law 2001, chapter 543 provides simple procedures for a person who wants to abandon a baby in a safe manner. It provides an affirmative defense to the prosecution for the crime of abandonment of a child. The affirmative defense is available for a person who delivers a child less than 31 days old to: a law enforcement officer; staff at a medical emergency room, not limited to a hospital emergency room; a medical services provider; or a hospital staff member. The safe haven provider may request information that would be helpful to the child's welfare, but may not detain anyone who is delivering the child in order to collect the information. Any information that is supplied must be provided to the Department of Human Services. The Department of Human Services is directed to establish guidelines to assist a safe haven provider concerning procedures to follow when a child is delivered to the safe haven provider. The person or entity who accepts a child under this Act or provides temporary custody of a child accepted under this Act is immune from civil, criminal and administrative liability for acting under this section if the person or entity acts in good faith, believing the action is required or authorized.

LD 1734

An Act to Promote Safe Schools

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUDLEY	ONTP	

LD 1734 proposed to allow a student who is harassed or assaulted on school grounds or during a school supervised activity for reasons of the race, color, religion, sex, ancestry, national origin, physical or mental disability or sexual orientation of the student to sue the school administrative unit for failing to prevent the abuse.

LD 1770

An Act Regarding Public Charities, Nonprofit Corporations and Conversions of Nonprofit Entities to For-profit Entities

PUBLIC 550

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL	OTP-AM MAJ	H-869
RAND	ONTP MIN	

LD 1770 proposed to amend several laws relating to nonprofit corporations and public charities. It proposed to give the Attorney General civil investigatory powers to enforce proper application of charitable funds. It proposed to require the Attorney General to review all conversion transactions involving public charities, and to require court approval for all such transactions, unless the Attorney General decides to waive court approval. The bill proposed to require the Attorney General to hold a public hearing on the transaction if 150 people sign a petition requesting such a hearing. The bill also proposed criteria for the court to consider in determining whether to approve the transaction. Finally, the bill proposed to amend the Maine Nonprofit Corporation Act to divide all such corporations into one of 2 categories: public benefit corporations and mutual benefit corporations. The bill also proposed to restrict the membership of financially interested persons on the board of public benefit corporations, to require that such corporations notify the Attorney General of significant changes in the

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corporation and to provide additional authority for the Attorney General to oversee the activities of such corporations.

Committee Amendment "A" (H-869) proposed to replace the bill.

It proposed to change the provisions relating to the Attorney General's authority over public charities by specifying the instances in which the Attorney General may use civil investigation powers under that law, requiring court approval for such investigations and clarifying the relationship between that law and the conversion law and requiring notice to the Superintendent of Insurance when entities regulated by the superintendent are under investigation.

The amendment proposed to change key definitions in the conversion sections of the bill, including the definition of "nonprofit conversion transaction" and "fair market value." It proposed to provide different processes for reviews of nonprofit conversion transactions, depending on the value of assets involved. Only transactions involving assets worth \$500,000 or more would require court approval. The Attorney General would approve transactions involving assets worth \$50,000 to \$499,999, using the same standards as for court approval. Transactions with a value of less than \$50,000 would not need approval, although notice to the Attorney General of those smaller transactions would be required. The amendment proposed to change the standards for approval of a conversion transaction, provide specific language regarding valuations and distributions of proceeds and change the penalty provisions. The amendment also proposed to add a provision relating to intervention in court proceedings for approval of conversion transactions. The intervention section proposed to allow any person interested in the outcome of the proceeding to intervene in the action.

With regard to the Maine Revised Statutes, Title 13-B, the amendment proposed to change the standard by which conflict-of-interest transactions are judged by removing the business judgment rule for most transactions. With one exception, such a transaction would be protected only if it is objectively fair to the corporation. The amendment proposed to clarify who is considered a "financially interested person" in the section of law prohibiting public benefit corporation boards of directors from having more than 49% of the membership consist of financially interested persons. The amendment proposed to add a section of law describing and prohibiting misapplication of funds or assets of a public benefit corporation. The amendment also proposed to clarify the relationship between the new conversion law and Title 13-B, clarify the Attorney General's authority to bring an action to void conflict of interest transactions involving public benefit corporations and change the law regarding inspection of books and records of the corporation.

The amendment also proposed to change the existing law regarding conversions of nonprofit hospital and medical services organizations to ensure that conversions of all such nonprofit entities are covered by that law and not the new conversion law. It also proposed to require the Superintendent of Insurance to review the existing conversion law and report back to the Legislature in 2003 on whether changes are needed to update the nonprofit hospital and medical services conversion law for any future conversions. The superintendent would be specifically directed to submit legislation to clarify that 100% of the net proceeds of a charitable organization subject to the nonprofit hospital and medical services conversion law are public assets and to make any other necessary changes.

Enacted law summary

Public Law 2001, chapter 550 amends the law relating to the Attorney General's power to oversee charitable entities, enacts new law relating to conversion of charitable assets to for-profit purposes, and amends the general law governing all non-profit corporations.

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Attorney General Authority over Public Charities. Part A of Chapter 550 provides civil investigative authority to enable the Attorney General to ensure that public charities make proper use of their charitable assets, and defines public charities to include non-profit corporations formed for charitable purposes as well as charitable trusts. The civil investigative authority provided in the new law may be used only for specified purposes, and must be approved in advance by a Justice of the Superior Court.

Conversion of Charitable Assets to For-Profit Uses. Chapter 550 provides 3 different processes for overseeing conversion of non-profit assets to for-profit use, depending on the fair market value of the assets to be converted. For small transactions (those with a value of less than \$50,000), a converting entity is only required to notify the Attorney General at least 20 days before the transaction is to occur. Larger transactions (those between \$50,000 and \$499,999) must be approved by the Attorney General, and the largest transactions (those valued at \$500,000 or more) must be approved by the Superior Court. The law defines the type of transactions that are subject to the new law and clarifies that many ordinary transactions are not included in the definition of “conversion transaction.”

The law provides for public participation in conversion reviews by requiring public notice, providing for public access to records, inviting public comment to the Attorney General when the Attorney General has approval authority and providing a liberal standard for intervention in court approval processes. The law sets standards for approval of conversions, including a requirement that the proceeds from such a conversion must be distributed to a charitable foundation or corporation that meets certain standards.

Chapter 550 also changes existing law regarding conversions of nonprofit hospital and medical services organizations to ensure that conversions of all such nonprofit entities are covered by that law and not the new conversion law. It also requires the Superintendent of Insurance to review the existing conversion law and report back to the Legislature in 2003 on whether changes are needed to update the nonprofit hospital and medical services conversion law for any future conversions.

Changes to the general non-profit corporations law. Part C of chapter 550 amends Title 13-B of the Maine Revised Statutes, the general nonprofit corporation law. It divides non-profit corporations into 2 categories: public benefit corporations and mutual benefit corporations. The definition of “public benefit corporation” includes a corporation recognized by the IRS as a 501(c)(3) organization, certain other corporations organized for public or charitable purposes, those designated as public benefit corporations by statute and those that elect to be a public benefit corporation. Non-profits that do not fall into the definition of “public benefit corporation” are mutual benefit corporations.

Chapter 550 applies several additional laws to public benefit corporations, including provisions that: (1) allow the Attorney General to ask a court to remove a director, void a conflict of interest transaction or dissolve the corporation under certain circumstances; (2) prohibit more than 49% of the directors of the corporation from being persons who are “financially interested” in the corporation; (3) require notice to the Attorney General of certain major corporate changes; and (4) prohibit and penalize misapplications of funds or assets of the public benefit corporation.

The law also changes the standard by which conflict-of-interest transactions in any non-profit corporation are judged by removing the business judgment rule for most transactions. With one exception, such a transaction is protected only if it is objectively fair to the corporation.

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LD 1840

An Act to Amend the Uniform Commercial Code, Article 9-A

PUBLIC 632

Sponsor(s)
LAVERDIERE
RAND

Committee Report
OTP-AM

Amendments Adopted
H-857

LD 1840 proposed to establish new, lower fees for communicating certain records under the Uniform Commercial Code by an authorized method other than writing, such as transmitting electronically.

Committee Amendment "A" (H-857) proposed to provide that there is no filing fee for filing with the Secretary of State certain termination statements for transactions for which the initial financing statements were filed between July 1, 1993 and July 1, 2001.

Enacted law summary

Public Law 2001, chapter 632 establishes new, lower fees for communicating certain records under the Uniform Commercial Code by an authorized method other than writing, such as transmitting the records electronically.

LD 1899

An Act Relating to the Dissemination of Intelligence and Investigative Information

PUBLIC 532

Sponsor(s)
MCALEVEY

Committee Report
OTP-AM

Amendments Adopted
S-433

LD 1899 proposed to allow the sharing of intelligence and investigative information between criminal justice agencies and the Department of Human Services in abuse, neglect and exploitation cases involving incapacitated or dependent adults.

Committee Amendment "A" (S-433) proposed to replace the bill to clarify the permitted dissemination of intelligence and investigative information under state law by specifically stating which agencies can share information.

Enacted law summary

Public Law 2001, chapter 532 allows for the sharing of intelligence and investigative information between criminal justice agencies and the Department of Human Services in abuse, neglect and exploitation cases involving incapacitated or dependent adults.

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LD 1904 **An Act to Require Tax-exempt Corporations to File Copies of Federal Internal Revenue Service Form 990 with the Secretary of State** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BENNETT	ONTP MAJ OTP MIN	

Most charitable corporations qualifying as tax-exempt under federal law must file IRS Form 990 as a means of ensuring public accountability. LD 1904 proposed to require such an organization to file a copy of that form with the Secretary of State as well.

LD 1928 **An Act to Authorize the Trial of Child Custody Cases Involving the Houlton Band of Maliseet Indians in the Penobscot Nation Tribal Court** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
LORING EDMONDS	ONTP	

LD 1928 proposed to grant exclusive jurisdiction to the Penobscot Nation Tribal Court over Indian child custody proceedings that involve a member of the Houlton Band of Maliseet Indians until such time as the Houlton Band of Maliseet Indians has its own tribal court.

LD 1940 **An Act Regarding the Repatriation of Native American Remains** **PUBLIC 601**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SOCTOMAH	OTP-AM MAJ ONTP MIN	H-975

LD 1940 proposed to provide that all Indian human remains that come into the possession of any private person must be transferred to the intertribal repatriation organization that is appointed by the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and Aroostook Band of Micmacs for reburial.

Committee Amendment "A" (H-975), the majority report, proposed to replace the bill. It proposed to establish procedures for anyone not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) to follow when in possession of human remains that are identified as Indian human remains. It also proposed procedures for Medical Examiner cases that are also subject to NAGPRA.

Enacted law summary

Public Law 2001, chapter 601 provides a person who possesses human remains that are identified as Indian human remains must transfer the remains to the intertribal repatriation organization that is appointed by the Passamaquoddy Tribe, Penobscot Nation, Houlton Band of Maliseet Indians and Aroostook Band of Micmacs. It

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provides that if the Indian human remains are subject to the Medical Examiner Act, the Chief Medical Examiner may retain the remains until they are no longer necessary for legal purposes. This requirement does not apply to human remains or persons and entities covered by the federal Native American Graves Protection and Repatriation Act, NAGPRA. Public Law 2001, chapter 601 also addresses human remains that are subject to NAGPRA that fall into the definition of Medical Examiner cases. The Chief Medical Examiner, the Maine Historic Preservation Commission and the Maine State Museum shall enter into a memorandum of understanding concerning the procedures the Chief Medical Examiner must follow when in possession of Indian human remains that are subject to NAGPRA. NAGPRA includes a limited period of study prior to repatriation; the memorandum of understanding will address that period for human remains that are subject to NAGPRA and are Medical Examiner cases.

LD 1950

An Act to Change the Requirement for Court-ordered Mental Examination

ONTP

Sponsor(s)
LAVERDIERE
TURNER

Committee Report
ONTP

Amendments Adopted

LD 1950 proposed to increase the flexibility available to the courts in requesting so-called stage 2 evaluations when a criminal defendant is being examined to determine the defendant's mental condition. Currently, such evaluations must be completed by a clinical psychologist and a psychiatrist. The change in the bill proposed to allow the stage 2 evaluation to be completed by a licensed psychologist or a psychiatrist and, for an additional evaluation by a licensed psychologist or psychiatrist, to be assigned if deemed necessary or desirable by the court or the director of the State Forensic Service.

LD 1969

An Act Concerning Custody and Visitation for Sex Offenders

PUBLIC 665

Sponsor(s)
CARR
MICHAUD MH

Committee Report
OTP-AM

Amendments Adopted
H-1033

LD 1969 proposed to prohibit a court from awarding custody of a minor child to a person who is a convicted sex offender. The bill proposed to allow visitation with a minor child to a convicted sex offender only if there is another adult present to supervise the visitation.

Committee Amendment "A" (H-870), the majority report, proposed to slightly modify the title and replace the bill. It proposed to require the court, when establishing parental rights and visitation concerning a child, to take into account a parent's convictions for sex offenses and sexually violent offenses. The court would retain discretion to weigh the information and how the existence of any convictions affects the best interests of the child. The same consideration would be taken when establishing grandparents' visitation. (Not adopted)

Committee Amendment "B" (H-871), the minority report, proposed to expand the bill to prohibit the court from ordering custody of a child to a sexually violent predator as well as a sex offender. It proposed to expand the bill to impose restrictions on visitation and contact with grandparents who are sexually violent predators, and to clarify conditions that may be imposed when the court orders supervised visitation. (Not adopted)

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Committee Amendment "C" (H-1033) was the unanimous report when the bill was recommitted to committee. It proposed to replace the bill. It proposed to require the court, when establishing parental rights and visitation concerning a child, to take into account a parent's convictions for sex offenses and sexually violent offenses. The court would retain discretion to weigh the information and how the existence of any convictions affects the best interests of the child. The same consideration must be taken when establishing grandparents' visitation.

This amendment proposed to require that in order to award primary residence to a person who is convicted of a child-related sexual offense, the court must find that it is in the best interests of the child and that adequate provision can be made to ensure the child's safety.

The same finding would be required when the court orders visitation and contact with a grandparent who is convicted of a child-related sexual offense.

House Amendment "A" to Committee Amendment "A" (H-888) proposed to prohibit the court from awarding primary custody to a person who is convicted of a child-related sexual offense.

This amendment proposed to permit the court to award parent-child contact with a person convicted of a child-related sexual offense, but only if the contact is appropriately supervised. The same supervision is required when the court orders visitation and contact with a grandparent who is convicted of a child-related sexual offense. (Not adopted)

Enacted law summary

Public Law 2001, chapter 665 requires the court, when establishing parental rights and visitation concerning a child, to take into account a parent's convictions for sex offenses and sexually violent offenses. The court retains discretion to weigh the information and how the existence of any convictions affects the best interests of the child. The same consideration must be taken when establishing grandparents' visitation.

Chapter 665 also requires that in order to award primary residence to a person who is convicted of a child-related sexual offense, the court must find that it is in the best interests of the child and that adequate provision can be made to ensure the child's safety. The same finding is required when the court orders visitation and contact with a grandparent who is convicted of a child-related sexual offense.

LD 1980

**An Act to Extend the Period During Which the Passamaquoddy
Tribe May Acquire Land in the City of Calais**

**VETO
SUSTAINED**

Sponsor(s)
MORRISON
YOUNGBLOOD

Committee Report
OTP

Amendments Adopted

LD 1980 proposed to extend until the year 2020 the option for the Passamaquoddy Tribe to acquire land in the City of Calais. This bill was vetoed by the Governor, and the House of Representatives sustained the veto.

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LD 1986 **An Act to Allow the State to Attach and Hold in Escrow Funds From Legal Settlements and Awards for the Purpose of Paying Child Support Obligations** **ONTP**

<u>Sponsor(s)</u> KILKELLY		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1986 was a concept draft pursuant to Joint Rule 208. It proposed to allow the State to attach and hold in escrow funds from legal settlements or awards, to be used to pay the recipients' child support obligations.

LD 1994 **An Act Concerning Passamaquoddy Land in Grand Lake Stream Plantation** **ONTP**

<u>Sponsor(s)</u> SOCTOMAH		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1994 proposed to add land in Grand Lake Stream Plantation to the Passamaquoddy Indian Reservation.

LD 2010 **An Act to Amend the Laws Governing Background Checks on Prospective Adoptive Parents** **PUBLIC 546**

<u>Sponsor(s)</u> TESSIER		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> H-856
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LD 2010 proposed to amend the laws governing background checks on prospective adoptive parents to accept as meeting the requirement a background check completed in the prior two years by a licensed child-placing agency and to require that the background check occur prior to placement of the child with the family.

Committee Amendment "A" (H-856) proposed to eliminate the proposed requirement that a prospective adoptive parent complete a background check prior to placement of the adoptee with that person. It also proposed to allow the Probate Court to waive a subsequent background check in certain circumstances.

Enacted law summary

Public Law 2001, chapter 546 amends the laws concerning background checks of prospective adoptive parents. It allows the Probate Court to waive a subsequent background check, including the criminal history check based on fingerprinting, if a background check under this requirement on the same person was completed within a reasonable period of time and the Probate Court is satisfied that nothing new that would be included in the background check has transpired since the last check.

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LD 2019

An Act to Protect Victims of Domestic Violence, Sexual Assault and Stalking

PUBLIC 539

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL RAND	OTP-AM	H-855 H-866 DUPLESSIE

LD 2019 proposed to establish the Address Confidentiality Program to be administered by the Secretary of State.

Committee Amendment "A" (H-855) proposed to revise language in the proposed Address Confidentiality Program concerning filing applications containing false or incorrect information or falsely claiming the need for participation in the program.

House Amendment "A" (H-866) was presented on behalf of the Committee on Bills in the Second Reading. It proposed to correct designation of rules to conform with the terms used in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

Enacted law summary

Public Law 2001, chapter 539 establishes the Address Confidentiality Program to be administered by the Secretary of State. The program provides state and local agencies with the ability to respond to requests for public records without disclosing the location of a victim of domestic violence, stalking or sexual assault. The program enables interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, stalking or sexual assault and enables state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

LD 2025

An Act to Make Certain Changes to the State's Child Support Enforcement Laws

**PUBLIC 554
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NASS MILLS	OTP-AM	H-868

LD 2025 proposed to amend the child support laws concerning the establishment and enforcement of child support.

Committee Amendment "A" (H-868) proposed to limit the authorization for DHS employees who are not attorneys to represent the Department in Probate Court.

This amendment proposed to amend the paternity statute to address proceedings in which there is more than one alleged father of the same child.

This amendment proposed to clarify the responsibility of the Department of Human Services, in consultation with the Supreme Judicial Court and other interested parties, to adopt the child support table by rule.

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This amendment proposed to clarify that the definition of "extraordinary medical expenses" is based on recurring, uninsured medical expenses in excess of \$250 per child or group of children per calendar year.

This amendment proposed to add to the statute language concerning how to calculate a child support obligation for extremely low-income child support obligors.

This amendment also proposed to clarify that a person who files an action to establish or vacate a paternity order or support order, to enforce a support order, to amend a support order or to collect support arrearages must send a copy of the motion to the Department of Human Services when the motion is filed if public assistance is involved or if the department provides support enforcement services.

This amendment proposed to add an emergency preamble and emergency clause to make the bill take effect immediately to bring the State into compliance with federal requirements concerning the National Medical Support Notice.

Enacted law summary

Public Law 2001, chapter 554 amends the statutes governing child support establishment and enforcement. It authorizes Department of Human Services employees who are not attorneys to represent the department in probate court in cases involving child support enforcement, although they are not permitted to prepare and file motions in Probate Court. It amends the paternity statute to address proceedings in which there is more than one alleged father of the same child. It authorizes the Department of Human Services to require an alleged father to submit to blood or tissue-typing tests prior to accepting an acknowledgement if it appears there is more than one alleged father. If the alleged father refuses the testing, the department may file an action in court. It clarifies the responsibility of the Department of Human Services, in consultation with the Supreme Judicial Court and other interested parties, to adopt the child support table by rule. It clarifies that the definition of "extraordinary medical expenses" is based on recurring, uninsured medical expenses in excess of \$250 per child or group of children per calendar year. It adds to the statute language concerning how to calculate a child support obligation for extremely low-income child support obligors (the "self-support reserve"). Chapter 554 amends existing law to require the use of the federally adopted National Medical Support Notice, used to ensure health insurance coverage for obligors' children as required by court orders. This form takes the place of what is currently termed the "health insurance withholding order." A state child support enforcement program is not in compliance with federal requirements and is subject to loss of federal child support enforcement grants if the form is not used. Chapter 554 also clarifies that a person who files an action to establish or vacate a paternity order or support order, to enforce a support order, to amend a support order or to collect support arrearages must send a copy of the motion to the Department of Human Services when the motion is filed if public assistance is involved or if the department provides support enforcement services.

Public Law 2001, chapter 554 was enacted as an emergency measure effective March 25, 2002.

Joint Standing Committee on Judiciary

LD 2083

An Act to Correct Errors and Inconsistencies in the Laws of Maine

PUBLIC 667
EMERGENCY

<u>Sponsor(s)</u>	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u>
		H-1071
		H-1097 LAVERDIERE
		S-567 RAND
		S-585 GOLDTHWAIT

LD 2083 proposed to make technical corrections of errors in the laws of Maine.

Committee Amendment "A" (H-1071) proposed to make technical and substantive corrections

House Amendment "A" to Committee Amendment "A" (H-1097) proposed to remove from the bill a duplicative section that appears both in the bill and Committee Amendment "A." This amendment also proposed to correct a conflict between Public Law 2001, chapter 578 and Public Law 2001, chapter 592 relating to the ability of a municipality to transfer development rights.

Senate Amendment "A" to Committee Amendment "A" (S-567) proposed to delete corrections contained in the bill that have been corrected in other bills.

Senate Amendment "B" to Committee Amendment "A" (S-572) proposed to strike the provisions that amend Private and Special Law 2001, chapter 45, section 1 concerning the sale and transmission of electricity generated by the hydropower facilities formerly owned by Great Northern Paper, Inc. (Not adopted)

Senate Amendment "C" to Committee Amendment "A" (S-585) proposed to correct an entry in Public Law 2001, chapter 559, Part B, section 3 that inadvertently de-appropriated funds in excess of the program's appropriation.

Senate Amendment "D" to Committee Amendment "A" (S-588) proposed to correct a conflict between Public Law 2001, chapter 578 and Public Law 2001, chapter 592 relating to the ability of a municipality to transfer development rights. (Covered by House Amendment "A" to Committee Amendment "A") (Not adopted)

Enacted law summary

Public Law 2001, chapter 667, An Act to Correct Errors and Inconsistencies in the Laws of Maine, made technical corrections and several substantive corrections. Substantive corrections are contained in Parts C, E and G. The substantive changes made by chapter 667 are as follows.

1. It corrects the effective date concerning repair and maintenance of bridges as provided in Public Law 2001, chapter 314.
2. It includes Judges of the District Court in the list of officials to be sworn in by the Governor.
3. It amends the laws governing the Baxter Compensation Authority concerning the Compensation Panel, the timing of compensation decisions, the communication of the decision and the signing of a release before payment of compensation.

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4. It revises the application of the smelt laws.
5. It revises the laws concerning ice fishing in recognition of the recent adoption of separate ice fishing rules.
6. It decriminalizes certain violations concerning keeping wild animals in captivity.
7. It corrects the language concerning school bus leases.
8. It corrects references to federally qualified health centers.
9. It updates the membership of the TANF Advisory Council to reflect the replacement of the Job Training Partnership Act.
10. It corrects the provision of death benefits to certain members of the State Fire Marshal's Office.
11. It corrects provisions governing the flags and flag holders at the graves of certain public servants.
12. It corrects the application of penalties for E-911 violations.
13. It corrects a conflict concerning the regulation of scooters.
14. It corrects language concerning certain funding of the Maine Health Access Fund.
15. It revises the recording requirements at the registries of deeds to accept sealed or embossed documents.
16. It revises provisions concerning retired teachers who become legislative employees.
17. It provides for PUC review of an exception to limitations on the provision of electricity from certain hydropower facilities.
18. It corrects an appropriation to the Ombudsman Program in the Executive Department.

See also LD 2216, Public Law 2001, chapter 710.

Public Law 2001, chapter 667 was enacted as an emergency measure effective April 30, 2002.

LD 2100

**An Act to Provide for Notice of Termination, Nonrenewal or
Change in Terms of Certain Leases**

PUBLIC 612

Sponsor(s)

Committee Report
OTP-AM MAJ
ONTP MIN

Amendments Adopted
H-974

LD 2100 proposed to enact the majority recommendations of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands. It proposed to regulate the relationship between landowners

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within jurisdiction of the Maine Land Use Regulation Commission and persons who have leases or other agreements with the landowners to occupy or construct residential, recreational or commercial structures on that land.

The bill proposed to require that such agreements be made in the form of written leases. It proposed to require the leases to provide a description of the boundaries of the leased land and to provide at least 90 days' notice of termination, nonrenewal or change in terms of the lease. It also proposed to require the landowner to give the structure owner at least one year to remove the structure from the property if the lease is terminated or not renewed, unless it is terminated or not renewed for cause.

The bill also proposed to give the lessees the right of first refusal to purchase the lot on which the structure sits, provided the lessor offers or intends to offer the lot for sale.

Committee Amendment "A" (H-974) proposed to replace the bill. It proposed to delete the provision of the bill giving certain lessees the right of first refusal to purchase the leased premises. The amendment also proposed to clarify that a survey or other formal description of the boundaries is not required.

The amendment proposed to change the advance notice period for a change in terms of a lease from 90 days to 30 days.

The amendment proposed to require lessors to give lessees at least one years' notice of the intent to terminate a lease, to enable the lessee to remove property or otherwise plan for termination. The terms of the lease would continue during the notice period, except that inconsistent termination provisions in the lease would be superseded by the statute, to the extent they are inconsistent. Also, the lessee could terminate the lease at any time during the notice period if, for example, the lessee is able to remove the structure prior to the end of the notice period and no longer wishes to occupy the property.

Enacted law summary

Public Law 2001, chapter 612 is based on recommendations of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands. Chapter 612 provides standards for leases between persons who own land within jurisdiction of the Maine Land Use Regulation Commission and persons who lease the land and occupy or construct residential, recreational or commercial structures on it. The new law requires that such agreements be made in the form of written leases, and that they contain at least a general description of the boundaries of the leased lot. It requires the lessor to provide at least 30 days' notice of change in terms of the lease. Chapter 612 also requires lessors to give lessees at least one years' notice of the intent to terminate a lease, to enable the lessee to remove property or otherwise plan for termination. The terms of the lease continue during the notice period, except that inconsistent termination provisions in the lease are superseded by the statute, to the extent they are inconsistent. Also, the lessee may terminate the lease at any time during the notice period if, for example, the lessee is able to remove the structure prior to the end of the notice period and no longer wishes to occupy the property.

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LD 2101

An Act to Allow a Lessee to Purchase Leased Premises When the Lessor Decides to Sell

PUBLIC 653

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	ONTP MAJ	H-1041 CARR
	OTP-AM MIN	H-1070 CARR
		H-973

LD 2101 proposed to enact the minority recommendations of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands. The minority recommendation includes the majority recommendations and an additional provision relating to commercial sporting camps.

The additional provision proposed to require the Bureau of Parks and Lands within the Department of Conservation to take land by eminent domain if the landowner refuses to sign a lease for a term of at least 10 years with a commercial sporting camp owner. The bureau would then lease the land to the commercial sporting camp owner in order to continue the business.

The provisions common to the minority and the majority reports propose to regulate the relationship between landowners within jurisdiction of the Maine Land Use Regulation Commission and persons who have leases or other agreements with the landowners to occupy or construct residential, recreational or commercial structures on that land.

The bill proposed to require that such agreements be made in the form of written leases. It proposed to require the leases to provide a description of the boundaries of the leased land and to provide at least 90 days' notice of termination, nonrenewal or change in terms of the lease. It also proposed to require the landowner to give the structure owner at least one year to remove the structure from the property if the lease is terminated or not renewed, unless it is terminated or not renewed for cause.

The bill also proposed to give the lessees the right of first refusal to purchase the lot on which the structure sits, provided the lessor offers or intends to offer the lot for sale.

Committee Amendment "A" (H-973) proposed to replace the bill. It proposed to strike all provisions of the bill except the provision giving lessees a right of first refusal, and clarify that the right exists when the lessor is willing to sell the leased premises as a separate parcel, not when the lessor is selling a larger parcel of which the leased premises is a small part. It also proposed to specify that the lease must specify a method of determining the value of the leased premises.

Enacted law summary

Public Law 2001, chapter 653 is based on a recommendation of the Committee to Study Issues Concerning Changes to the Traditional Uses of Maine Forests and Lands. Chapter 653 provides for a right of first refusal in leases between persons who own land within jurisdiction of the Maine Land Use Regulation Commission and persons who lease the land and occupy or construct residential, recreational or commercial structures on it. The lessee would have the right to purchase the leased lot if the landowner chooses to offer the parcel for sale. Leases must contain a provision for determining the price at which the lot could be purchased. This law applies to leases entered into on or after July 25, 2002.

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LD 2105 **An Act to Enact the Maine Professional Service Corporation Act** **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u> ONTP	<u>Amendments Adopted</u>
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LD 2105 proposed to repeal the Professional Service Corporation Act and replace it with a new chapter of law governing professional service corporations. The substance of LD 2105 was folded into LD 361, which was enacted as Public Law 2001, chapter 640.

LD 2131 **An Act to Develop a Controlled Substances Prescription Monitoring and Intervention Program** **ONTP**

ONTP

LD 2131 was jointly referred to the Joint Standing Committees on Business and Economic Development and Judiciary, pursuant to Joint Order SP 769. The bill proposed the establishment of a controlled substances prescription monitoring and intervention program, including a computerized program to track each prescription for a controlled substance listed in schedule II, III or IV that is filled by a pharmacy that is registered with the Maine Board of Pharmacy.

Committee Amendment "A" (S-518), a minority report, proposed to replace the bill. The amendment proposed to direct the Department of Behavioral and Developmental Services, Office of Substance Abuse to study the feasibility and advisability of establishing a controlled substances prescription monitoring and intervention program. The amendment proposed to direct the Office of Substance Abuse to make recommendations related to the implementation of the program, including the controlled substances to be included in the program, intervention and enforcement issues and confidentiality issues. The amendment also proposed to require the Office of Substance Abuse to report back to the joint standing committee of the Legislature having jurisdiction over business and economic development matters by January 2, 2003 and proposed to authorize the committee to report out a bill during the First Regular Session of the 121st Legislature. (Not adopted)

Committee Amendment "B" (S-519), a minority report, proposed to remove the controlled substances prescription monitoring and intervention program from the Department of Professional and Financial Regulation and place it with the Department of Behavioral and Developmental Services, Office of Substance Abuse. This amendment also proposed to require the Office of Substance Abuse and the Department of Professional and Financial Regulation, Maine Board of Pharmacy to develop the program by January 1, 2004. (Not adopted)

House Amendment "A" to Committee Amendment "B" (H-1067) proposed to provide that the Office of Substance Abuse develop and administer the controlled substances prescription monitoring and intervention program. (Not adopted)

Joint Standing Committee on Judiciary

LD 2149

An Act to Implement the Recommendations of the Committee to Review the Child Protective System

PUBLIC 696

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-1078
	OTP-AM MIN	S-614 GOLDTHWAIT

LD 2149 contains the legislative recommendations of the Committee to Review the Child Protective System, created by Joint Order 2001, H.P. 1385. A full discussion of all the committee's recommendations is contained in the committee's final report, submitted to the Joint Standing Committee on Judiciary in December 2001.

Committee Amendment “A” (H-1078), the majority report, proposed several changes to the bill, including revisions of language governing use of evidence, determinations of jeopardy, and disclosure of confidential information. It also proposed that when the court determines that reunification efforts must cease, the determination must be made by clear and convincing evidence after a full evidentiary hearing. It proposed that the Department of Human Services apply for a waiver to allow for the reimbursement for services and for room and board for children who have not entered into the care and custody of the department. It proposed that the bill take effect October 1, 2002 in order to reduce costs.

Committee Amendment “B” (H-1079), the minority report, was the same as Committee Amendment “A” except that it proposed that the court be permitted to exclude evidence if it was gathered in an interview with a child that was not recorded and that all proceedings and records are open to the public, unless a court orders otherwise. (Not adopted)

Senate Amendment “A” to Committee Amendment “A” (S-569) proposed an expedited appeal of interlocutory orders to the Superior Court, proposed to require the court to issue an order scheduling discovery in child protective cases with vacation of the protective order for noncompliance by the Department of Human Services, and proposed to hold a Department of Human Services employee personally liable for damages as well as attorney's fees and costs if the employee intentionally or knowingly violates a department policy, a rule adopted by the department or any provision of the chapter governing child protective cases. (Not adopted)

Senate Amendment “B” to Committee Amendment “A” (S-614) proposed to retain current language concerning notice and opportunity to be heard as required by federal regulations, as well as remove several provisions of the bill as amended by Committee Amendment “A”.

1. The amendment proposed to eliminate the elevation of the standard of proof that is required from "preponderance of the evidence" to "clear and convincing evidence" when there is a determination either not to commence or to cease reunification. It also proposed to delete the requirement that the proceeding within which there is a determination either not to commence reunification efforts or to cease reunification efforts must be a full evidentiary hearing.
2. It proposed to delete the specific authority for court-appointed attorneys to represent parents in certain family matters proceedings.
3. It proposed to delete the appropriations and allocations section and the delayed effective date section.

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Enacted law summary

Public Law 2001, chapter 696, implements most of the legislative recommendations of the Committee to Review the Child Protective System. It makes many changes to current law, including the following.

1. It amends the Maine Juvenile Code to be consistent with federal law and the child protective statutes with regard to juveniles who are ordered by the court to be removed from their homes.
2. It requires the child welfare services ombudsman program to consult with appropriate interested parties and establish a program to provide information about the child protective system to parents.
3. It rewrites the statutes governing access to and participation in child protective proceedings for nonparties to observe or participate by establishing three expanded tiers of possible participation, without opening proceedings to the public in general.
4. It requires the Department of Human Services to produce decision-making policies in writing and make them publicly available. It requires the department to post the most current policies on a publicly accessible site on the Internet. Among other topics, the policies must address kinship care and placement.
5. It requires the Department of Human Services, to the extent possible, to audio record all planned questioning of and interviews with children. The department must adopt rules to establish procedures to audio record interviews; the rules are major substantive rules. The fact that an interview was not recorded does not by itself require the exclusion of the information collected in the interview. It also clarifies that any person who is being questioned or interviewed may record the questioning or interview.
6. It amends the law to prohibit the use of evidence that would otherwise be inadmissible hearsay, admitted in the summary preliminary protection hearing under section 4034, subsection 4, in any other proceeding unless the evidence is admitted pursuant to the applicable laws and rules of evidence. It also provides that a finding that is based on that evidence is inadmissible in any other proceeding.
7. It requires the court to make findings of fact on the record on which the jeopardy determination is based; it provides that the jeopardy determination made at the jeopardy hearing must be a fresh determination, and the judge cannot rely on the findings of fact in the preliminary protection order hearing as precedent to establish jeopardy at the jeopardy hearing. This is consistent with In re Isaiah B., 1999 ME 174, 740 A.2d 988 (Me. 1999).
8. It authorizes the court to order any disposition, including custody to the department, if there is a determination of jeopardy with regard to one parent and the other parent or custodian has not been located and therefore not properly served with the petition and notice of proceedings as required by current law. If and when the parent is located, the court may hold a hearing and make a jeopardy determination with regard to that parent.
9. It adjusts the timing of the preliminary protection hearing after a preliminary protection order is issued. It provides that the hearing cannot be held less than 7 days after the order is issued and must be held before 14 days have passed since the issuance of the order. It also requires the court to order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order. Such visitation is not required if there is a compelling reason not to.

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10. It directs the Supreme Judicial Court to consider establishing a pilot project to provide representation to parents in child protective proceedings on a contract basis with one or more attorneys or firms. A similar pilot project was undertaken to provide representation for criminal defendants.
11. It requires the Department of Human Services to report to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters about planned changes to increase care by relatives and placement with relatives, and how the department will inform families about visitation and placement options for relatives.
12. It directs the Department of Human Services to apply for a waiver to allow for the reimbursement for services and for room and board for children who have not entered into the care and custody of the department.

LD 2153	An Act to Amend the Freedom of Access Laws to Protect Security Plans, Security Procedures and Risk Assessments	PUBLIC 675
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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NORBERT	OTP-AM MAJ	H-1057
MICHAUD MH	ONTP MIN	

LD 2153 proposed to add an exception to the definition of "public records" in the freedom of access laws that would protect information concerning security plans or procedures of agencies of State Government and local government. Such information is protected under the Maine Revised Statutes, Title 16, section 614 when it is held by a law enforcement agency identified in that statute but not when held by other agencies of state, county or local government.

Committee Amendment "A" (H-1057), the majority report, proposed to limit the types of records that would be exempt from public disclosure.

Enacted law summary

Public Law 2001, chapter 675 exempts from the definition of "public record" security-related information that specifically concerns preventing or preparing for acts of terrorism. The "terrorism" definition closely mirrors the definition in proposed changes to the Maine Criminal Code. Chapter 675 also clarifies that only that information that, if released, could pose a threat to public safety is covered by this exemption. Finally, it adds the term "risk assessments" to the description of security-related information in order to prevent the disclosure of information that could permit exploitation of existing vulnerabilities.

LD 2157	An Act Regarding the Requirements for Documenting Pretest and Post-test Counseling for HIV Tests	PUBLIC 647
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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MADORE	OTP	
RAND		

Joint Standing Committee on Judiciary

LD 2157 proposed to change the way a person documents the counseling provided to a person who is being tested for HIV. Current law requires that a written memorandum summarizing the contents of the discussion be given to the person tested. This bill proposed to require that an entry in the person's medical record summarizing the discussion be made. The bill also proposed to require that the provider of the HIV test give the person being counseled a written document summarizing the discussion resulting from the pretest and post-test counseling. A written consent form or other document may be used to satisfy the requirement for documenting the pretest and post-test counseling discussion.

Enacted law summary

Public Law 2001, chapter 647 changes the law requiring health care providers to offer counseling to a person before and after the person is tested for HIV. Current law requires the test provider to prepare a written memorandum summarizing the counseling discussion and to give the memorandum to the person who is being tested. Chapter 647 instead requires the test provider to make an entry in the person's medical record summarizing the discussion and to give the person being counseled a written document containing information on the issues required to be covered in counseling. Written consent forms or other standardized forms may be used to meet the requirement if they provide the necessary information.

LD 2164

**An Act to Provide Government with the Necessary Authority to
Respond to a Public Health Emergency Caused by an Act of
Bioterrorism**

PUBLIC 694

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL BENNETT	OTP-AM MAJ OTP-AM MIN ONTP MIN	H-1062

LD 2164 was jointly referred to the Joint Standing Committees on Health and Human Services and Judiciary. It includes the following proposals regarding the laws governing emergency health powers.

1. It proposed to relieve the Department of Human Services from the requirement to adopt emergency rules in the event of a public health emergency and instead allow the department to implement rules previously adopted designed to become effective upon the declaration of a state of public health emergency.
2. It proposed to allow the Department of Human Services to exercise its public health emergency powers upon a declaration of a state of public health emergency by the Governor.
3. It proposed to allow the Department of Human Services to have access to certain health information or take a person into temporary custody and order specific emergency care, vaccination, treatment or evaluation in the event of a public health emergency if the department has reasonable cause to believe the person has either been exposed to or is at risk of transmitting a communicable disease that poses a serious and imminent threat to human or animal life; there is no less restrictive alternative available to safeguard the public health and safety; and the delay involved in securing a court order would pose an imminent risk to the person or pose a serious risk of transmission of the communicable disease. A person could not be detained more than 48 hours without judicial review.

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4. It proposed to eliminate the requirement that the Department of Human Services file with the court treatment plans and report subsequent to the issuance of a court order for involuntary medical treatment, subject to the requirement that any such order must be subject to judicial review within 30 days.
5. It proposed to allow the Department of Human Services to dispose of the remains of victims of a communicable disease during a public health emergency if there are no less restrictive alternatives to protecting public health or safety from the threat of communicable disease.
6. It proposed to require that if the Governor or another person declares by proclamation a state of public health emergency, the Governor or that person shall, to the extent feasible, also disseminate that proclamation to persons with disabilities.
7. It proposed to require the Governor to convene the Public Health Emergency Planning Commission to review the provisions of state law relevant to public health emergency preparedness, consider measures to safeguard individual dignity and medical record confidentiality and examine strategies to protect the public from the threat of communicable diseases and acts of bioterrorism and report back to the Joint Standing Committee on Health and Human Services and the Legislative Council.
8. It proposed to require the Joint Standing Committee on Appropriations and Financial Affairs to develop a mechanism for the financing of a response to a declaration of a state of public health emergency by the Governor, the Governor's designee or a person acting in place of the Governor.

Committee Amendment "A" (H-1062), the majority report of the combined committees, proposed to replace the bill. It proposed to establish a system for the Department of Human Services to address extreme public health emergencies, including ordering isolation, quarantine and prescribed care. It proposed a process of judicial review, with court-appointed counsel for the indigent, as soon as reasonably possible but not later than 48 hours after the person becomes subject to the prescribed care. It proposed to establish a medical-legal advisory group to advise the Commissioner of Human Services regarding extreme public health emergencies and to provide advice to the Governor after an extreme public health emergency has been declared. It proposed that the entire Act be repealed on October 31, 2003.

Committee Amendment "B" (H-1063), a minority report of the combined committees, proposed to replace the bill. It proposed to establish the Task Force to Study Extreme Health Emergencies, consisting of 12 legislative members, with a reporting date of November 6, 2002. (Not adopted)

House Amendment "A" to Committee Amendment "A" (H-1095) proposed to require that the rules, concerning communicable diseases, to be adopted by the Department of Human Services are major substantive rules, rather than routine technical rules. (Not adopted)

House Amendment "B" to Committee Amendment "A" (H-1098) proposed to authorize the convening of the Public Health Emergency Planning Commission to review the law relevant to public health emergency and extreme public health emergency preparedness. It proposed development of proposals for financing a response to a declaration of a state of extreme public health emergency by the Governor, response of the Judicial Department in the event of a public health emergency and educational materials for health care professionals and members of the public. (Not adopted)

Joint Standing Committee on Judiciary

LD 2216

An Act to Correct Recently Enacted Legislation

PUBLIC 710
EMERGENCY

Sponsor(s)
LAVERDIERE
RAND

Committee Report

Amendments Adopted
H-1118 LAVERDIERE
S-625 GOLDTHWAIT

LD 2216 proposed to make both substantive and technical corrections to recently enacted legislation. It was not referred to committee.

House Amendment “A” (H-1118) proposed to apply the provisions of the Maine Certificate of Need Act of 2002 regarding the ability of the Commissioner of Human Services to review an application for a certificate of need to any application filed or approved on or after January 1, 1999.

Senate Amendment “A” (S-625) proposed to change the law concerning dental amalgam fillings and alternatives.

Enacted law summary

Public Law 2001, c. 710 makes several substantive and technical changes necessitated by recently enacted legislation. The Judiciary Committee reviewed the contents of the bill, although it was not referred to committee. Chapter 710 makes the following changes.

1. It clarifies that any errors in the numbering of subchapters or articles in the law, such as occurred in Public Law 2001, chapter 640, may be taken care of administratively and will ensure greater consistency in the future by allowing Roman numerals to be cited by their Arabic number equivalents.
2. It resolves a technical conflict concerning economic development incentives created by the enactment of two subparagraphs with the same number designation by Public Law 2001, chapter 642 and chapter 652, corrects a cross-reference to the subparagraphs being renumbered and provides an appropriate effective date.
3. It corrects an error in Public Law 2001, chapter 617 that imposed surcharges, fines and forfeitures for violations of the animal welfare laws.
4. It corrects language added by Public Law 2001, chapter 545 concerning service credit purchases by employees of the Maine Technical College System by taking out the reference to electing to purchase service credits. That deletion is consistent with other provisions in chapter 545.
5. It corrects a conflict created by Public Law 2001, chapter 559, Part KK, chapter 604, and chapter 697, Part B, relating to law enforcement training for Capitol Security officers.
6. It corrects a conflict created by Public Law 2001, chapters 671 and 687 that amended the same section of law with different wording concerning who may accompany a person holding a motor vehicle instruction permit.
7. It clarifies the language in the definition of "employee" in the workers' compensation laws concerning family members of members of limited liability companies who are also employed by that LLC.

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8. It clarifies the law concerning seat belts and child safety seats to ensure that children who are 8 years of age are required to be properly secured in a seat belt.
9. It corrects a reference to the Bureau of Elder and Adult Services within the Department of Human Services as the agency that administers the consumer-directed personal care assistance services program.
10. It corrects the description of funds to be provided to shelters in Bangor, Lewiston and Portland as appropriated in Public Law 2001, chapter 559.
11. It corrects an error in listing the qualifying year for sea urchin draggers who were inadvertently excluded from obtaining a 2002 sea urchin dragging license under Resolve 2001, chapter 112.
12. It applies the provisions of the Maine Certificate of Need Act of 2002 regarding the ability of the Commissioner of Human Services to review an application for a certificate of need to any application filed or approved on or after January 1, 1999.
13. It requires the Department of Human Services to display a copy of the dental amalgam brochure on its Internet site and deletes language requiring that copies of the poster and brochure be provided to dentists at cost. It also amends the statutes to be consistent with the rules adopted by the Department of Human Services concerning dental amalgam and alternatives.

Public Law 2001, chapter 710 was enacted as an emergency measure effective April 30, 2002, although some provisions have later effective dates.

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